

**Catering and Concession Service Agreement
Austin Convention Center Department**

This Catering and Concession Service Agreement (this "Agreement") is entered into by and between the City of Austin, Texas, a municipal corporation and political subdivision of the State of Texas, (the "City") and Fine Host Corporation, a Delaware corporation authorized to do business in the State of Texas, (the "Caterer").

**Article I
Definitions**

- 1.1 **Accounting Month** means a monthly period equivalent to the Caterer's monthly accounting month, which is arranged on a four-week, four-week and five-week basis for each quarter of the Accounting Year.
- 1.2 **Accounting Year** means the fiscal accounting year of the City, which begins on October 1 and ends the following September 30. The initial Accounting Year shall begin on October 1, 1997 and end on September 30, 1998.
- 1.3 **Agreement** means this Agreement and all exhibits attached hereto, together with the City's Request for Proposals, with addenda, and Caterer's Response to the City's Request for Proposals. Any conflict between the terms of this Agreement, the Request for Proposals, and Caterer's Response to the Request for Proposals shall be resolved by relying on the terms of the documents in the following order of precedence: 1) Catering Agreement, 2) Caterer's Response to Request for Proposals, and 3) City's Request for Proposals.
- 1.4 **Base Gross Revenues** means the amount calculated each Accounting Year by subtracting an amount equal to the Maximum Productivity Reward multiplied by 10 for that Accounting Year from the amount of Gross Revenues budgeted by City for such year. With respect to the initial Accounting Year, Base Gross Revenues shall be \$2,297,660.00. (See example of calculation method on Exhibit F.)
- 1.5 **Center** means the Austin Convention Center, Palmer Auditorium and City Coliseum. The Austin Convention Center is located between East Cesar Chavez and East Third Street, Red River and Trinity Street in Austin, Texas. Palmer Auditorium and City Coliseum are both located between Riverside Drive, Barton Springs Road, South First Street and Dawson Road, Austin, Texas.
- 1.6 **City** means the City of Austin, Texas.

- 1.7 **Catering and Concession** means the privileges granted to and duties imposed upon the Caterer by this Agreement which include, but are not limited to, exclusive management of concessions operations, non-exclusive in-house catering, and exclusive alcoholic beverage sales and vending machine operations at the Center.
- 1.8 **Catering and Concession Operations** means all catering, concession and vending events and activities at the Center throughout the term of this Agreement.
- 1.9 **Catering and Concession Account** means the bank account described in subsection 5.2 hereof.
- 1.10 **Catering and Concession Fee** means the total compensation payable to the Caterer by City per Accounting Year as a result of services performed under this Agreement, and shall be comprised of the Periodic Fixed Fee and Productivity Reward. (See example of calculation method on Exhibit F.)
- 1.11 **Contract Administrator** means the Director, or the Director's designee.
- 1.12 **Department** means the Austin Convention Center Department of the City, or its successor.
- 1.13 **Director** means the Director of the Department.
- 1.14 **Effective Date** means the date this Agreement goes into effect, which shall be October 1, 1997.
- 1.15 **Expenses** means the sum of (a) the Catering and Concession Fee, as defined in Section 1.10, and (b) the following actual, reasonable expenditures incurred by Caterer in performing its obligations under this Agreement, excluding any Operating Expenses, as such term is defined in the Management Service Agreement, all of which expenses shall be paid from the Catering and Concession Account, determined on an accrual basis in accordance with Generally Accepted Accounting Principles:
- 1.15.1 labor and total direct payroll directly related to this Agreement as well as all related fringe benefit costs, but excluding (a) any of Caterer's employees not assigned to the Center (except those employees who may, from time to time, be brought or relocated by the Caterer to the Center, if the use of such employees is pre-approved by the Director), (b) any payroll expense or employee benefit expenses allocable to the provision of services or goods under the Management Services Agreement, and (c) all costs, of whatever nature or source, related to the preparation of

Caterer's response to the City's Request for Proposals, oral presentations to the City prior to the selection of Caterer for this Agreement and the costs and expenses for negotiating this Catering Agreement;

1.15.2 direct costs of all food, inventory, candy, tobacco, non-alcoholic beverages, merchandise, materials, and supplies, including novelties and souvenirs used during the course of the Agreement;

1.15.3 all direct operating costs incurred by Caterer in connection with the Catering and Concession operations, including vehicle expense, taxes, (with the exception of any sales taxes, gross receipts taxes or other taxes that are based upon the price of a good, including food or beverages, or a service, or similar taxes), insurance, independent certified audits, cleaning, training (excluding employee benefit and payroll costs), licenses, professional fees, maintenance and repair of equipment, replacement uniforms and small wares, pest control, permits, cost of required performance bond or other collateral, rental expenses, utilities including water, electric, drainage and natural gas, as reflected in the Annual Sales and Marketing Plan submitted in accordance with Article 6.5 hereof, or as updated or modified in monthly forecasts of operations, and approved in writing by the Director, but excluding (a) costs associated with Caterer's corporate overhead or corporate administrative expenses, (b) travel costs of Caterer's off-site management to and from Austin, except as pre-approved by the Director in writing, (c) any costs paid for out of the Replacement, Maintenance, Repair, and Promotion Account Fund, and (d) the costs of any independent certified audit, should the audit reveal a shortage in Profits due the City of more than three percent (3%) of the total Profits paid to the City for that Accounting Year; and

1.15.4 the amount paid into the Replacement, Maintenance, Repair and Promotion Fund as described in subsection 7.1.

1.16 Financial Statements means balance sheet, income statement, and statement of cash flows prepared in accordance with Generally Accepted Accounting Principles and any other financial reports or statements reasonably deemed necessary by the Director for interpretation by the Department of Caterer's participation in Concession and Catering Operations by Caterer.

1.17 General Manager means the individual retained by Caterer to oversee the performance of Caterer's obligations under this Agreement and to manage the day-to-day Catering and Concession Operations at the Center. The General Manager shall be located at the Austin Convention Center and, except in instances in which the Director provides prior written approval, shall be devoted exclusively to Caterer's obligations under this Agreement.

- 1.18 Gross Sales** means all monies paid or payable to an Outside Caterer or to subcontractors of an Outside Caterer for sales generated or services rendered by such Outside Caterer or its subcontractors at a specific event at Center .
- 1.19 Gross Revenues** means all monies paid or payable to the Caterer or to the City for sales made or services rendered from the Center or any other source related directly or indirectly to Catering and Concession Operations, including but not limited to all monies paid or payable to Caterer by Convention Beverages, Inc. (hereinafter, "CBI") pursuant to the Management Services Agreement and monies from Outside Caterers and Subcontractors, whether collected or uncollected, whether for cash or credit) less any sales tax, the amount of which is determined by the amount of sales made, and which is directly payable to the taxing authority by Caterer.
- 1.20 Incentive Gross Revenues** means an amount equal to the sum of: (a) Gross Revenues and (b) all Adjusted Gross Revenue, as defined in the Management Service Agreement and as shown on Financial Statements, from the sale of alcohol at Center by Caterer or by CBI (or CBI's successor entity, in the event the Management Service Contract terminates), less (c) any amounts or fees paid to Caterer by CBI under the Management Service Agreement.
- 1.21 M/WBE Program** means the City of Austin's Minority and Women Owned Business Enterprise Program, as described in Chapter 5-7 of the Code of the City of Austin.
- 1.22 M/WBE** means a Minority-Owned Business Enterprise or a Woman-Owned Business Enterprise certified by SMBR and as defined in the Code of the City of Austin.
- 1.23 Management Service Agreement** means the Beverage Concession Services Management Agreement between Caterer and Convention Beverages, Inc. ("CBI") entered into as of October 1, 1997, for the provision of sales of alcoholic beverages at the Center by CBI, Inc., which is attached hereto as Exhibit A.
- 1.24 Maximum Catering and Concession Fee** means the maximum amount of compensation payable to the Caterer by City in any one Accounting Year. The Maximum Catering and Concession Fee shall be calculated by dividing the total Periodic Fixed Fee for any Accounting Year by eight-tenths (.8). (See example of calculation method on Exhibit F.)
- 1.25 Maximum Productivity Reward** means the amount, if any, calculated each Accounting Year by subtracting the total Periodic Fixed Fee for such Accounting Year from the Maximum Catering and Concession Fee, provided that the Maximum Productivity Award in any Accounting Year may not exceed twenty

percent (20%) of the total Catering and Concession Fee paid for such year. The Maximum Productivity Reward for the first Accounting Year shall be \$66,250.00. (See example of calculation method on Exhibit F.)

1.26 Outside Caterer means a business entity engaged by Caterer to provide food and non-alcoholic beverages for a function or event at the Center. Any agreement between the Caterer and an Outside Caterer for an event at the Center must include: (a) the payment of a twenty percent (20%) fee to Caterer for each event, based on either Gross Sales or the retail value of food and non-alcoholic beverages generated by the event, whichever is higher, and (b) the payment of Caterer's costs associated with provision of alcoholic beverages for the event. A Subcontractor may not also be an Outside Caterer during the term of its Subcontract.

1.27 Periodic Fixed Fee means a fee payable to the Caterer after each Accounting Month. During the first Accounting Year, the Periodic Fixed Fee shall be \$22,083.33 per Accounting Month, provided, however, that the Periodic Fixed Fee payable to Caterer for the period beginning October 1, 1997 and ending November 19, 1997, shall be adjusted by the Periodic Fixed Fees paid to Caterer by City under the prior agreement for this time period. Subject to the limitation described in Section 5.1, the Periodic Fixed Fee payable in subsequent Accounting Years shall be adjusted as follows: the Periodic Fixed Fee for the immediately preceding Accounting Year shall be increased or decreased in accordance with the increase or decrease in the Consumer Price Index, as used by City of Austin for budget purposes (the Consumer Price Index- All Urban Consumers, or CPI-U) for the twelve-month period beginning June 1 of the previous Accounting Year and ending on the following May 31. *

1.28 Productivity Reward means compensation payable to Caterer in an amount equal to ten percent (10%) of the excess of Incentive Gross Revenues over Base Gross Revenues in any one Accounting Year. *

The total Productivity Reward in any one Accounting Year may not exceed the Maximum Productivity Reward. The Productivity Reward may be paid upon the receipt by the Contract Administrator of a complete accounting statement showing that the Incentive Gross Revenues for the current Accounting Year have exceeded the Base Gross Revenues for the same Accounting Year. (See example of calculation method in Exhibit F.)

1.29 Profit means an amount, as shown on Financial Statements, equal to the excess at the conclusion of the Accounting Month of the Gross Revenues over the Expenses, plus any interest earned on amounts deposited in the Catering and Concession Account.

1.30 Replacement, Maintenance, Repair, and Promotion Fund means the City

account set up within the operating fund of the Department and further described in Subsection 7.1 hereof. This fund shall be an Expense, as described in Section 1.15.

- 1.31 Request for Proposals** means the City of Austin's Request for Proposals No. CM97300024 dated June 16, 1997, attached hereto as Exhibit B.
- 1.34 SMBR** means the City's Small and Minority Business Resources Department, or its successor. SMBR administers the M/WBE Program.
- 1.35 Subcontracts and Subcontractors** means any person or any entity, other than Outside Caterers and CBI or any other entity that contracts with Caterer to sell alcoholic beverages at Center, that provides goods or services to the Caterer for use under this Agreement, including, but not limited to, produce and equipment; vending goods, equipment, and services; and concession goods, equipment, and services. Any Subcontracts entered into after the Effective Date must be approved by the Director (which approval shall not be unreasonably withheld).
- 1.36 User** means any person or entity renting space in the Center for exhibitions, conventions, or trade shows, or for other uses authorized by the City.

Article II

Term of Agreement

This Agreement shall begin on the Effective Date and expire on September 30, 2007, unless sooner terminated as provided herein.

Article III

Rights and Obligations of Caterer

- 3.1 Grant of Concession Catering Rights.** Subject to the terms of this Agreement, the City hereby grants to the Caterer the rights, and the Caterer hereby accepts the obligations and duties, set forth below:
 - 3.1.1** Caterer shall have the non-exclusive right to sell food, non-alcoholic beverages, gifts and novelties. The Director must approve any gift or novelty item sold by the Caterer. Any gift or novelty items featuring the Center's logo shall be subject to the approval of the Director as to design, quality and workmanship, which approval shall not be unreasonably withheld. Gifts and novelties for special events are not within the exclusive right of Caterer under this Agreement
 - 3.1.2** Caterer shall have the exclusive right to provide, either directly or through

contract with CBI or another entity, alcoholic beverages at any event held at the Center, at any location within the Center. Caterer shall also have the exclusive right to sell food and beverages through concession stands and vending machines at the Center. Caterer's right to sell gifts and novelties through concession stands or otherwise shall be non-exclusive.

3.1.3 The City reserves the right to allow User to employ an Outside Caterer, on the condition that the Outside Caterer shall, without relying on the use of the Center's kitchen facilities or equipment, provide all prepared food, non-alcoholic beverages, equipment and small wares necessary to perform and complete its catering function at the Center.

3.1.4 Caterer shall have the right to market Caterer's Catering and Concession services in concert with the marketing efforts of the Department and the Director.

3.1.5 Caterer shall have the duty to pay Expenses from the Catering and Concession Account. Caterer shall pay Expenses promptly and in accordance with Section 5.2.

3.2 Alcoholic Beverages; Agreement Not to Compete

3.2.1 The Caterer's privilege to provide alcoholic beverages shall be subject to the provisions of applicable Texas law and regulations of the Texas Alcoholic Beverage Commission, or its successor. The decision as to which alcoholic beverages may be sold, as well as at which events they may be sold, rests with the Director.

3.2.2 Throughout the term of this Agreement, the Caterer shall be capable of providing and shall provide first-class, full-scale food and beverage service in accordance with the terms of this Agreement at all events scheduled at the Center.

3.2.3 Except as provided in Section 3.1.1 and 3.1.2, no competing vendors or sales representatives of merchandise normally sold by the Caterer will be allowed to operate within the confines of the Center at any time during the Term of this Agreement, except with the written consent of the Caterer. Nothing in this Agreement shall be construed to prohibit a User from exhibiting any food, non-alcoholic drink or item of sample size in connection with the exhibit or other type of event, or from dispensing free samples (which shall mean a less than saleable quantity) of any of the foregoing when such User is in the business of manufacturing or distributing such food and beverage items.

3.3 Caterer as an Independent Contractor. In the operation of this Agreement, the Caterer is and shall be deemed an independent contractor, not an agent of the City. The Caterer shall hire its own employees, retain its own agents, and

contract directly with its suppliers and other service providers. The Caterer shall have no authority whatsoever to incur any obligation or to make any representations on behalf of the City.

- 3.4 Rules and Regulations Affecting Caterer. The Caterer shall comply fully with any rules or regulations promulgated by the Director in the course of his duties.
- 3.5 Changes to Scope of Catering and Concession Operations. If, during the term of this Agreement, a material change, as defined below, in the scope of Catering and Concession Operations required at Center, or any part of Center, is planned or occurs, the Director shall notify the Caterer in writing of such material change. Within ten (10) calendar days of such notice, the parties shall meet and make good faith efforts to re-negotiate the compensation and, if necessary, staffing terms of this Agreement. The parties shall have sixty (60) days following the notification to reach agreement on amended compensation and, if appropriate, staffing provisions. If the parties fail to reach such agreement within the stated time period, either party shall have the right to terminate this Agreement upon providing the other party with at least ninety (90) days written notice. The provisions of Section 13.5 shall apply in the event of such termination.

Material Changes shall be any of the following:

- *Expansion of a Department facility, and such expansion requires additional food and beverage service
- * Closure of a facility
- * Closure of a portion of a facility, if such closure reduces capacity or need for food and beverage services.
- * Sale or other transfer of a Department facility to a party not controlled by City
- * Acquisition of a new Department venue that requires food and beverage service

Article IV

Provision of Facilities and Space to Caterers

- 4.1 Provision of Space. The parties intend that the Caterer have the use of space within the Center in order to render the first-class services required by this Agreement. The space designated for use by the Caterer includes major kitchen pantries, catering and concession facilities and equipment adequate for service required hereunder as well as space, where available, for portable units as may be required (the locations and styles of which must be approved in advance by the Director).
- 4.2 Caterer's Office and Storage Space. In addition to the space to be designated pursuant to subsection 4.1, the Department shall make available to the Caterer (a) office space, adequate in all respects for the Caterer's accounting, record keeping,

sales, office operations, and money counting functions; and (b) reasonable storage and commissary space for stock and equipment. The total square footage of all space available to the Caterer under this Agreement at any time shall not exceed ten percent (10%) of the gross square footage of the Center.

Article V

Catering and Concession Fee

- 5.1 Compensation. The Caterer shall be entitled, as sole compensation for services under this Agreement, to the Periodic Fixed Fee together with any Productivity Reward. The Periodic Fixed Fee shall be payable to the Caterer in equal monthly installments, commencing at the end of the first Accounting Month. The Periodic Fixed Fee during the first Accounting Year shall be \$22,083.33 per Accounting Month, provided that the total Periodic Fixed Fee for the period of October 1, 1997, through November 19, 1997, shall be adjusted by the Periodic Fixed Fees paid to Caterer by City under the prior agreement for this time period. Under no circumstances shall the total Catering and Concession Fee for the first Accounting Year exceed \$331,250.00. The Periodic Fixed Fee payable to Caterer in subsequent Accounting Years shall be adjusted as follows: the Periodic Fixed Fee for the immediately preceding Accounting Year shall be increased or decreased in accordance with the increase or decrease in the Consumer Price Index, as used by City of Austin for budget purposes (the Consumer Price Index- All Urban Consumers, or CPI-U) for the twelve-month period beginning June 1 of the previous Accounting Year and ending on the following May 31, provided, however, that the cumulative amount of all increases to the Periodic Fixed Fee throughout the term of this Agreement may not exceed \$39,000.00 without the approval of the City Council.
- 5.2 Catering and Concession Account. The Caterer shall establish a Catering and Concession Account at a bank agreeable to the Director, separate from all other accounts, and shall deposit therein all monies and revenues of any type generated from catering, concession, or vending activities at Center. The Caterer shall provide the Director with a copy of the monthly bank statements, including Caterer's and CBI's bank statements related to sales of alcoholic beverages at Center, no later than the 20th day following the end of each Accounting Month. The Catering and Concession Account shall be used exclusively for all revenue, disbursement of Profits to City, and payment of all Expenses.
- 5.3 Payment of Catering and Concession Fee. Upon delivery of a complete Financial Statement to the Director, which shall be due no later than thirty (30) days after the end of each Accounting Month as stated in Section 6.2, the Caterer shall disburse to itself from the Catering and Concession Account an amount equal to one-twelfth (1/12) of the Periodic Fixed Fee for that Accounting Year. In any Accounting Month that annual accumulated Incentive Gross Revenues exceed annual accumulated Base Gross Revenues for the Accounting Year to date, the

Caterer shall also disburse to itself the amount of the Productivity Reward to which it is entitled. Each year during the term of this Agreement, the Caterer shall contribute fifty percent (50%) of any Productivity Reward to Austin non-profit community organizations by helping to underwrite events that are sponsored by such organizations at the Center.



- 5.4 Disbursements. Upon delivery of each Financial Statement to the Director, and to the extent cash is available, the Caterer shall disburse to the City (a) one hundred percent (100%) of the Profits for the Accounting Month, and (b) the amount due City under Section 7.1 for the Replacement, Maintenance, Repair, and Promotion Fund. If sufficient cash is not available, payments to the City shall be made as soon as sufficient cash is available and, during the period of unavailability, Caterer agrees to provide monthly written accounting updates to Director.

Profits for each Accounting Month shall be stated on each Financial Statement on both a current, year-to-date basis and with a comparison to the corresponding Accounting Month from the immediately preceding Accounting Year. Any interest earned on amounts deposited in the Catering and Concession Account shall be included as Profits.

Article VI

Accounting

- 6.1 Change Fund. The Caterer shall establish, with its own funds, and shall maintain a "Change Fund" to be used for petty cash purposes. The funds in the Change Fund shall be and remain the property of the Caterer.
- 6.2 Financial Statements. The Caterer shall deliver the following documents to the Director within the time period stated, together with any documents or reports required by subsections 1.27 and 5.3, in detail and form satisfactory to the Director:

- (a) Financial Statements within thirty (30) days after the end of each Accounting Month, and
- (b) a Balance Sheet within thirty (30) days of the end of each Accounting Year quarter

The first page of each Financial Statement and Balance Sheet shall be signed and dated by an executive officer or authorized representative of the Caterer certifying the accuracy and completeness of the document. The Financial Statements shall include supporting reports such as monthly bank statements, cash account reconciliations, accounts receivable detail listing (subsidiary ledger) and accounts payable detail listing (subsidiary ledger). In addition, detailed account numbers, year-to-date balances, corresponding Accounting Month figures for the immediately preceding Accounting Year on a monthly and year-to-

date basis, and budgeted balances shall be included.

The following additional documents shall be submitted together with the Financial Statements:

- (a) a statement setting forth the amount of Replacement, Maintenance, Repair, and Promotion Fund payments made or due to the City; and
- (b) a forecast of operations.

- 6.3 Record Keeping and Inspection. Caterer shall maintain a separate set of books and records for its operations at the Center, including alcohol operations, in accordance with Generally Accepted Accounting Principles. The Caterer must keep original invoices for all materials brought on the premises and must submit sales statements as support for the required Financial Statements. No materials shall be brought to the Center without supporting invoices. The Caterer shall also maintain payroll summaries, copies of payroll tax returns, Catering and Concession Account deposit receipts and bank statements. The City or its authorized agents shall have the right to inspect such books or original entries and other related books, wherever located, at such reasonable times and as often as may be requested during the term of this Agreement and, following the term of this Agreement, for a period of three (3) years, or such further time as necessary to complete an audit should an audit last beyond three (3) years after the term of this Agreement.
- 6.4 Sales and Inventory Documentation. The Caterer shall keep complete and accurate inventory control records (i.e. stand sheets). An inventory for concessions shall be performed before and after each event, and a sales reports shall be prepared for each event held at the Center. A weekly inventory of all food and beverage items shall also be performed. The Caterer shall reconcile the cost of goods sold to revenue earned. The Caterer shall not permit any of its employees (with the exception of vendors or concession stand operators who do not generally use cash registers) to make change from open cash drawers, boxes or containers, or from pockets of clothing. The Caterer shall be responsible for retail inventory accounting for all concession and catering operations, whether operated by the Caterer or its Subcontractors. The Caterer shall require its Subcontractors to perform retail inventory accounting and shall include a provision requiring such accounting in each of its Subcontracts.
- 6.5 Annual Sales and Marketing Plan. The Caterer shall prepare and submit to the Director, on the schedule provided below, an Annual Sales and Marketing Plan for the forthcoming Accounting Year. The Annual Sales and Marketing Plan shall, at a minimum, include all income and expense items spread by Accounting Month, detailed marketing plans, proposed changes in any policies promulgated by the Caterer, and proposed changes in M/WBE Subcontractors. Each Sales and Marketing Plan shall include a forecast of income and expenses for each Accounting Month during the Accounting Year.

For each Accounting Year, the Caterer shall submit a draft Annual Sales and Marketing Plan on or before May 1 of each year preceding the beginning of the next Accounting Year for review, comment, and approval by the Director. The final plan shall be submitted to the Director no later than the July preceding the beginning of the next Accounting Year.

- 6.6 Annual Certified Audit. Independent, certified audits of the Caterer's operations shall be submitted to the Director by April 30 of each Accounting Year. The first audit shall be due April 30, 1999, and the final audit due April 30, 2008. In the event an audit reveals a shortage in Profits due the City of more than three percent (3%) of the total profit paid to the City for that Accounting Year, the cost of such audit shall be borne by the Caterer.

Article VII Equipment

- 7.1 Replacement, Maintenance, and Repair of Catering and Concession Equipment and Furnishings; Promotion; Separate Account. The Caterer shall transfer to the City for deposit into the Department's operating fund a percentage, not to exceed five percent (5%), of each Accounting Month's Gross Revenues as referenced in Section 5.4. The actual percentage amount of the transfer shall be established each year in the Annual Sales and Marketing Plan. Assets in this fund shall be used solely for acquisition, replacement, repair and maintenance of Catering and Concession equipment and furnishings or the promotion of concessions and catering products and services. All expenditures suggested by Caterer out of this fund shall be subject to the prior written approval of the Director and to applicable state law and City requirements regarding the procurement of goods and services. Any unexpended cash balance of the fund is and shall remain the property of the City.
- 7.2 Leasehold Improvements. The Caterer is not required to make any leasehold improvements to the Center, and is not authorized to make such improvements without the prior written approval of the City.
- 7.3 Annual Inventory of Equipment. The Caterer shall perform an annual physical inventory of the equipment provided under this Article VII, reconciled to book inventory. The inventory shall be completed and delivered to the Director on or before September 30 of each Accounting Year.

Clause to
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Article VIII

Catering and Concession Operations

In addition to the obligations set forth in Article III, the Caterer agrees to the following:

- 8.1 Notice of Events and Cancellations. The Director will give the Caterer reasonable advance notice of the time and the nature of all scheduled events and such information as is available regarding the probable attendance at such events. Every effort shall be made by the Director to notify the Caterer of cancellation of previously scheduled events and, when notice has been given, the City shall assume no liability for such cancellations. The Caterer shall be held accountable for furnishing full and adequate service for the full period of time required for any event about which it has received notice.
- 8.2 The Caterer's Obligation to Market Center. The Caterer shall use its best efforts to market the Center and generate Gross Revenues for the benefit of the City consistent with the representations contained in the Caterer's Response to Request for Proposals.
- 8.3 Location of Stands. The use, number, or location of all portable concession stands and the space required by the Caterer must be approved in advance by the Director. The Director must approve any change in the design, layout, and location of all physical facilities and equipment for the Catering and Concession operations.
- 8.4 Promulgation and Approval of Catering and Concession Operations Policies and Procedures. The Caterer is responsible for developing and submitting to the Director for review, comment and approval, any changes or additions to the policies, procedures and Catering and Concession operation programs.
- 8.5 The Caterer also agrees to perform the following duties:
 - 8.5.1 provide a highly skilled professional on-site Catering and Concession General Manager and Executive Chef with the necessary experience in facilities of comparable size and expertise to provide the overall management capability for a first-class concessions and high quality catering operation. The General Manager and Executive Chef, as well as any proposed replacements or successors to the General Manager and Executive Chef, must have the prior approval of the Director;
 - 8.5.2 adhere to all necessary policies and procedures for the Catering and Concession operations including those required for Subcontractor operations;
 - 8.5.3 recruit, employ, and train all employees necessary for the successful operation of Concessions and Catering functions; training of the

employees must encompass the concepts and policies of a first-class Concession and Catering operation and include safety training;

- 8.5.4 design and prepare specifications for uniforms for Catering and Concession employees to wear at all events, including identification badges, and obtain Director's approval of uniform design;
- 8.5.5 provide for the retail sale of food, beverages, candy and similar products at all appropriate Concession and Catering operations in the Center;
- 8.5.6 provide and maintain vending machines in the Center for use by patrons of the Center; the style, location and level of maintenance of the machines must be approved in advance by the Director; any vending machines in the Center for the exclusive use of City employees are not within the scope of this Agreement;
- 8.5.7 order, purchase, receive delivery of, and store all consumable supplies and products necessary for operations;
- 8.5.8 prepare or cause to be prepared all concession products for sale or distribution;
- 8.5.9 advise and make recommendations to the Director pertaining to the operational aspects of the Concessions and Catering services, including but not limited to the choosing of type, quality, brand, and price of products; the use of portable concession stands; the sale of products; and the preparation of the catering menu;
- 8.5.10 comply with all applicable laws and regulations governing the handling, sale and disposal of Catering and Concession products, including but not limited to the procurement and uninterrupted maintenance of all necessary permits, licenses, and insurance required by government agencies having jurisdiction over operations of the Center; failure to maintain any required permit, license, or insurance may be considered grounds for termination of this Agreement.
- 8.5.11 maintain at all times all Catering and Concession service areas, business offices, kitchen dock areas, and retail sales areas in a neat, professional, and sanitary condition; provide for the cleaning and waste removal from all Catering and Concession areas to a central collection point; order, on a regular basis, permanent pest control and solid waste removal through professional service contracts approved by the Director;
- 8.5.12 arrange for any required repairs or maintenance to the Catering and Concession service equipment and locations, and comply with all warranty and service requirements related thereto;

- 8.5.13 monitor, report to the Director and, upon approval of the Director, arrange and pay for replacement or modification of the Catering and Concession equipment and facilities, pursuant to the procedure described in Section 7.1;
 - 8.5.14 pay, on a timely basis, all business and occupational taxes and similar taxes required by law related to the Catering and Concession service operations from the Catering and Concession Account, provided that sales taxes, gross receipts taxes and other taxes excluded as "Expenses" in Section 1.15.3 shall not be booked as "Expenses";
 - 8.5.15 promptly bill, collect, and record all revenues in accordance with Generally Accepted Accounting Principles and Article 6; and
 - 8.5.16 collect and submit monthly Subcontractor reports, maintain M/WBE records, including M/WBE participation reports, and submit them as described in Article 10 hereof.
- 8.6 Caterer's Employees and Caterer's Use of Department Premises.

- 8.6.1 The Caterer is responsible for employing competent and orderly employees who are neat, clean, and professional in appearance, who act in a courteous and competent manner, and who treat all patrons in a respectful manner. Whenever the Director notifies the Caterer that an employee of the Caterer is deemed to be incompetent or disorderly, the Caterer will investigate the concerns immediately and thoroughly, and if good cause for the Director's complaint is confirmed, shall take immediate and appropriate actions to remedy the problems; provided, however, such actions shall not violate any Federal, State, or local applicable law or regulation.

The Caterer shall not discriminate against any employee or applicant for employment because of race, sex, religion, ancestry, national origin or place of birth, age, marital status or physical disability with respect to employment, recruitment, promotion, transfer, layoff, termination pay rates or other related forms of compensation, or selection for training, including apprenticeships, and will operate in compliance with any and all such laws governing the same.

- 8.6.2 The Caterer shall advise temporary employees to enter and remain on the Center's premises only during events at the Center and for a reasonable time prior to and subsequent to events, and only for the purpose of exercising, during events, the rights and privileges herein mentioned. The City shall provide up to ten (10) employee lockers without charge for the use of the Caterer's key, permanent employees.

- 8.6.3 The Caterer shall provide sufficient employees in all bars and concession stands at all times during an event at the Center. The Caterer shall be responsible for training its employees to ensure operation of the Catering and Concession services in a first-class manner. The Caterer shall be responsible for ensuring that its employees are neatly and cleanly uniformed at all events at the Center.
- 8.6.4 The Caterer shall employ a General Manager at the Center and a Site Manager to oversee operations at both Palmer Auditorium and City Coliseum. The Site Manager shall report to the General Manager. Should the Director determine that the General Manager is not satisfactorily performing the duties of the General Manager, the Caterer shall, within thirty (30) days of receipt of written notice of such dissatisfaction, replace the General Manager with one who is satisfactory to the Director.
- 8.7 City's Right of Entry. Nothing herein contained shall be held to limit or qualify the right of the City to the free and unobstructed use, occupation, and control of the City and the ingress and egress for itself, its employees, lessees, and the public. Representatives of the City, authorized by the Director, shall have the right to enter and to have access to, at reasonable times and in a reasonable manner, all Department facilities, including those occupied by the Caterer during events and at all times when Catering and Concession employees are present.
- 8.8 Cleaning and Maintenance. The Caterer shall keep all areas of the Center, except seating areas, within a radius of ten (10) feet of each stand, commissary, concession, and Catering and Concession work area, clean and free from all rubbish. The Caterer shall employ the necessary personnel before, during and after hours of any event to ensure compliance with Section 8.5.11.
- 8.9 Agreement Not to Hire Executive Personnel. Absent the express, written permission of the Caterer, the City shall not attempt to hire the General Manager employed by the Caterer during the term of this Agreement and for one (1) year after the termination, for any cause, of this Agreement. Additionally, the City will not encourage the Caterer's successor to hire the General Manager.

Article IX

Quality and Prices

- 9.1 All foods, drinks, beverages, confections, and other items sold or kept for sale at the Center shall be of first quality, wholesome, and pure, and must conform in all respects to all applicable Federal, State, City and County health laws, statutes, ordinances, and regulations. No imitation, adulterated or misbranded article shall be sold or kept for sale and all products must be handled with due regard for

sanitation. All merchandise kept for sale shall be subject to inspection and approval or rejection by the Director. Any article rejected by the Director shall be removed from the premises and shall not be offered for sale. The Caterer will comply with industry standards of beer, wine, and other alcoholic beverages regarding quality, quantity, storage, and handling.

The Caterer shall furnish to the patrons of the Center, facilities and services at all times during each event whether the Center is in operation for use of the public or for the use of a tenant.

- 9.2 Prices. The Caterer shall post in a conspicuous place at each bar and concession stand a complete list of prices of all articles offered for sale. The content and manner of posting of each list, including the style and size of the signs, shall be subject to the approval of the Director, which approval shall not be unreasonably withheld. Prior to implementing any price change the Caterer shall notify and obtain approval from the Director. This approval requirement shall apply to all items offered to patrons or tenants of the Center, whether provided through concessions or vending operations or the catering menus. In the event that the Director and the Caterer cannot agree on the size of annual price increases, it is agreed that the Caterer's prices may be increased per item per Accounting Year, by the amount of increase in the annual Consumer Price Index All Urban Consumers (CPI-U) as announced by the Federal government for the calendar year immediately preceding the year in question.

Article X

M/WBE Subcontractors

- 10.1 Minority Compliance Plan. The Caterer's MBE/WBE Compliance Plan (Fine Host M/WBE Compliance Plan dated July 9, 1997, attached as Exhibit D) details immediate and ongoing outreach and recruitment efforts among M/WBEs. Additionally, the Plan discloses the M/WBE firms identified at the time of proposal submission to provide services, as well as those that can provide subcontracting throughout the term of this Agreement.
- 10.2 Monthly M/WBE Reports. Each month, when the Accounting Statement is presented to the Director, the Caterer shall also submit to the Director reports of participation by M/WBE Subcontractors during the preceding Accounting Month. Reporting forms shall be developed by the Caterer and submitted to the Director for approval within fifteen (15) days of the Effective Date, which approval shall not be unreasonably withheld or delayed. Revisions of such reporting forms due to changes in the Code of the City of Austin or otherwise shall be incorporated by Caterer into its forms within sixty (60) days of the notice for such change.
- 10.2.1 The Caterer shall report, for each event held during each Accounting Month, (a) the number of concession, vending or other stands operated by

M/WBEs and non-M/WBEs and(b) the types and locations of the concessions, vending or other stands awarded to M/WBEs and non-M/WBEs. In addition, for each Accounting Month, the Caterer shall report the amounts paid and the percentage of operational procurements or future capital investments obtained from M/WBEs and non-M/WBEs based on total expenditures.

10.2.2 The Caterer shall report the revenues generated by M/WBEs providing concession services for each Accounting Month.

10.3 Annual M/WBE Plan. By May 1 of each Accounting Year, the Caterer shall provide an Annual M/WBE Plan to the Director detailing its proposed list of M/WBE Subcontractors and its proposed Subcontract terms for review. The Director shall either approve or deny the proposals by the following June 1. Each Annual M/WBE plan shall detail the training and support services to be provided by Caterer to each M/WBE Subcontractor.

10.4 Changes in M/WBE Subcontractors. If the Caterer should encounter a need to change a M/WBE Subcontractor, the Caterer shall make Good Faith Efforts to replace the M/WBE Subcontractor with another M/WBE Subcontractor. The Caterer shall notify the Director of each proposed Subcontractor change. SMBR shall have responsibility for determining whether the substitute firm is an M/WBE, or, if the Caterer desires to substitute an M/WBE Subcontractor with a non-M/WBE Subcontractor, that the Caterer has made a Good Faith Effort in its efforts related to the substitution, and for communicating its determinations to the Director. The Caterer shall not proceed with the substitution without prior approval from the Director.

10.5 In this Article, "Good Faith Efforts" means the standard used to determine the Caterer's diligence of efforts and attempts to achieve the goals for M/WBE Subcontractor participation in those instances where the goals are not met.

In determining Good Faith Efforts by the Caterer, the City will consider the Caterer's M/WBE recruiting efforts, the M/WBE firms contacted in good faith by the Caterer in each applicable service and commodity category and the outcome of the contacts, detailed written M/WBE participation strategy, including but not limited to, appropriate advertising, recruitment and selection criteria and utilization of creative business relationships between the Caterer and M/WBE firms (i.e. joint ventures, partnerships, etc.), to increase M/WBE participation in other areas.

Article XI

Alcoholic Beverages

11.1 Wine, beer and other alcoholic beverages are to be offered for sale to the extent permitted by applicable state and local laws and subject to regulations

established by the Department.

- 11.2 Liquor Licenses. The Caterer shall apply for, or cause CBI or another entity to apply for and maintain, throughout the term hereof (in each case with the full cooperation of the City and the Director) all licenses necessary for the sale and storage of alcoholic beverages at the Center. at all events at the Center.
- 11.3 Retention of Licensed Status. In the event the Caterer, CBI, or another entity that has contracted with Caterer to hold the alcoholic beverage license for sales at Center is found to manage the Catering and Concession operations in a manner in violation of the State law or applicable regulations concerning alcoholic beverages, as determined by the Texas Alcoholic Beverage Commission, the Caterer shall do all things necessary to retain or regain such license or status, or to ensure that CBI or the other entity it has contracted with, if applicable, retains or regains such license or status at no cost to the City.

Article XII

Bonds and Insurance

- 12.1 Performance Bond. A performance bond executed by the Caterer as principal issued by a surety company acceptable to the City in the sum of \$100,000.00 must be tendered on or before the execution of this Agreement, and must remain in force throughout the term of this Agreement. City shall have the right to approve the terms of the performance bond prior to issuance. The performance bond shall be conditioned upon the prompt payment by the Caterer of all sums due the City during the term of this Agreement as well as faithful performance by Caterer of all other obligations, conditions and covenants of this Agreement.
- 12.2 Required Insurance. The Caterer shall obtain the bonds and insurance coverage described and the terms and conditions set forth in the City's Request for Proposal and provide evidence of such bonds and insurance on or before the execution of this Agreement. The insurance policies must be written by solvent insurance companies in good standing with the Texas Board of Insurance. On all policies except Worker's Compensation and Employer's Liability, the City shall be an additionally insured. Such policies must remain in full force and effect throughout the Term of this Agreement and may not be canceled or substantially altered prior to thirty (30) days and with prior written notice to the insured and the additionally insured.

Article XIII

Term and Termination

- 13.1 Term. This Agreement shall commence on October 1, 1997, and shall terminate on September 30, 2007, unless sooner terminated as provided in this Article XIII or under Section 3.5.
- 13.2 Termination for Breach. This Agreement may be terminated by either party for the failure, by omission or commission, of the other party to keep, observe or perform any covenant, agreement, term or provision of this Agreement, and such default shall have continued for a period of sixty (60) days after receipt of written notice thereof from the non-defaulting party to the defaulting party.
- 13.3 Other Termination. Either party may terminate this Agreement at any time if the other party files or has filed against it a voluntary or involuntary petition in bankruptcy or a voluntary or involuntary petition or an answer seeking reorganization, an arrangement, readjustment of its debts, or for any other relief under the Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing; or any action by such party indicating its consent to, approval, or acquiescence of such party to the appointment of, a receiver or trustee for all or a substantial part of its property; the making by such party of an assignment for the benefit of creditors; the inability of such party or its admission in writing of its inability to pay its debts as they mature; the involuntary appointment of a receiver or trustee of such party for all or a substantial part of its property; the issuance of a warrant of attachment, execution of similar process against any substantial part of the property of such party, and the continuance of the same for thirty (30) days undismissed, undischarged, or unbonded; or the liquidation, dissolution or termination of the corporate existence of such party.
- 13.4 Non Funding. The City's payment obligations to the Caterer are payable only and solely from funds appropriated and available for purposes of this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available. The City shall provide the Caterer written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement.
- 13.5 Rights and Duties Upon Termination. The following provision shall apply in the event of a termination of this Agreement for any reason whatsoever.
- 13.5.1 Delivery of Premises. The Caterer shall remove its property from the Center and shall deliver to the City the premises and good title to all property for which full repayment to the Caterer has occurred or which otherwise belongs to the City, free and clear of all liens and encumbrances

and in such condition as at the beginning of the Agreement, excepting (i) ordinary wear and tear, (ii) loss or damage occurring without the primary negligence or fault of the Caterer, or (iii) damage occurring as a result of fire, flood, or other unavoidable casualty or occurrence occurring without primary negligence of the Caterer.

13.5.2 Final Accounting. The Caterer shall deliver to the City, within thirty (30) days of the date of termination, a final accounting and all amounts owed to the City as of the date of termination, after withholding all amounts to which the Caterer is entitled under this Agreement.

13.5.3 Food and Beverage Products and Supplies, Novelties. The Caterer shall submit to the City, within twenty (20) days of the date of termination, a schedule of all usable food and beverage products and supplies and novelties held by the Caterer on the date of termination for use or sale in its Catering and Concession operations.

13.5.5 Surrender of Liquor License. Caterer shall surrender its alcoholic beverage license or, in the event CBI or another entity under contract with Caterer holds the license at the time this Agreement is terminated, Caterer shall ensure the license is properly surrendered by such entity.

Article XIV Miscellaneous

14.1 Claims. In the event that any claim, demand, or other action is made or brought by any person, firm, corporation, or other entity against the Caterer, or any Subcontractor, the Caterer shall give written notice hereof to the City within five (5) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation or other entity making such claim, or that instituted or threatened to institute any type of action or preceding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by certified mail, return receipt requested, and shall be directly sent to the City's Law Department, PO Box 1088, Austin, Texas 78767-8828, Attention: Convention Center Attorney, and to the Risk Manager of the City at the same address, and to the Director at Austin Convention Center, 500 East Cesar Chavez, Austin, Texas 78701.

14.2 Laws, Statutes and other Governmental Regulations. The Caterer agrees to comply with all applicable laws statutes, ordinances and other governmental regulations prevailing during the term of this Agreement, and the Caterer will not suffer or permit to be done anything on the premises of the Center in violation of any such laws, ordinances, rules or regulations.

- 14.3 Assignment. This Agreement is personal in nature between the parties and cannot be assigned or transferred by law to a third party without the express written consent of authorized representatives of both parties. Each of the terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as their respective successors and assigns. Whenever in this Agreement reference is made to either the City or the Caterer, the reference shall be deemed to include, wherever applicable, the legal representatives, successors and assigns of either party.
- 14.4 Notices. All notices under this Agreement shall be made by personal delivery or registered mail, certified receipt requested; and facsimile transmission on the same date as personal delivery or posting in the mail. Effective date of such notice shall be date of actual delivery or three (3) days after the date of posting with the U.S. Postal Service with said notice being sent to last known address and fax number of the recipient.

City of Austin:
Director, Austin Convention Center Department
PO Box 1088
Austin, Texas 78767
FAX (512) 404-4416

with copies to:
Law Department, ATTN: Convention Center Attorney
City of Austin
114 West 15th Street, Fifth Floor
Austin, Texas 78701
FAX (512) 499-2894

Purchasing Director, City of Austin
PO 1088
Austin, Texas 78767
FAX (512) 499-2388

Caterer:
Fine Host Corporation
ATTN: President
3 Greenwich Office Park
Greenwich, CT 06831

- 14.5 Some obligations of the City to be performed under this Agreement may be subject to approval by the Austin City Council and City Manager. A copy of the minutes of the City Council vote authorizing this Agreement is attached as Exhibit E.

- 14.6 Severability. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Agreement, which shall be in full force and effect and enforceable in accordance with its terms.
- 14.7 Contract Administrator. The Caterer shall communicate all Catering and Concession Operations matters initially to the Contract Administrator.
- 14.8 Rights to Proposal and Contractual Material. All documents submitted by the Caterer shall become property of the City upon receipt.
- 14.9 Copyrights and Rights to Data. Where services under this Agreement produce writings, sound recordings, pictorial reproduction, drawings, or other graphical representation and works of any similar nature ("Works"), the City has the right to use, duplicate and disclose such Works in whole or in part, in any manner, for any purpose whatsoever and have others do so. If the material is copyrightable, the Caterer may copyright such, and the City reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish and use such Works, in whole or in part, and to authorize others to do so.
- 14.10 Records. The Caterer shall maintain full and accurate records of all operations and receipts, which records shall be in a form satisfactory to the Director. City personnel and auditors designated by the City shall have the right to examine all records, books, papers, and receipts of the Caterer relative to the Gross Sales and invoices to support the Gross Sales and all aspects of access to said records shall be had upon reasonable notice by the City and at anytime during the Caterer's hours of operation. Said records shall be maintained for at least three (3) years after the expiration of this Agreement and kept on City facilities or at some other location mutually agreeable to the parties.
- 14.11 Performance. Failure by the City to insist in any one or more instances upon performance of any of the terms and conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any terms and conditions, but the Caterer's obligation with respect to such performance shall continue in full force and effect.
- 14.12 Extent of Agreement and Amendments This Agreement represents the entire agreement between the City of Austin and the Caterer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written document signed by both parties.
- 14.13 Force Majeure. Neither party shall be liable nor deemed to be in default for any delay or failure to perform under this Agreement deemed to result, directly or indirectly, from any cause beyond the reasonable control of either party including, without limitations, acts of God, civil or military authority, acts of

public enemy, fires, floods, strikes or regulatory delay or restraint.

- 14.14 Control of Building. The buildings and premises, including the keys thereto, shall at all times be under the control of the Director or other duly authorized representatives of the City, and the City shall have the right to enter the premises at all times during the period covered by this Agreement. The entrances and exits for said premises shall be locked and unlocked at such times as may be reasonably required by the Caterer for his use of the City facilities, but the Caterer, at his own expense, must at all times place proper watchmen at all entrances and exits when the same are unlocked at times other than normal City facilities' working hours. The Caterer is permitted to install an alarm system in the storage areas as designated by Director. Only emergency and security personnel of the City shall have access to said secured area and only in the event of an emergency.
- 14.15 Operating Conditions. The Caterer agrees that it will employ and retain, on the City premises, management personnel during all Caterer's working hours, such managers to serve as liaison with City personnel and to be empowered to receive and act upon all complaints, suggestions or requests which may arise from the general public, persons being served by the Caterer, or City personnel. In addition, an authorized representative of the Caterer must be on duty within the City facilities at the hours and dates specified by the City in order to facilitate the planning and execution of service orders. The Caterer also must arrange for floor communications units to facilitate service orders or for contact with service employees on the premises. In addition, the Caterer shall maintain a 24-hour telephone contact number in case of a show or service emergency requiring the Caterer's services.
- 14.16 Limits of Liability. The City shall not be liable for any damage to or loss of any goods, merchandise, or equipment used or stored at City facilities which loss or damage does not result directly or indirectly from the City's sole negligence, nor will it be responsible for any loss due to power failures or other interference with utilities which is beyond the City's control.
- 14.17 Taxes. The Caterer agrees to pay any and all lawful taxes upon personal property and improvements and all other lawful taxes levied against the property, income, equipment, or operations of the Caterer. Delinquency in paying any such tax may be cause for termination of this Agreement.
- 14.18 Indemnification. The Caterer shall indemnify and hold harmless the City (which, for purposes of this section shall include, City officials, officers, employees, agents and contractors) from and against any and all claims, losses, damages, causes of action, liabilities and expenses including, without limitation, attorney's fees (collectively "Claims") if such Claims result from or arise out of or in connection with any breach by the Caterer or any employee, representatives, agents, guests, or contractors of the City including, without limitation, the

Caterer's agents, employees, contractors, invitees and guests. The indemnification obligations stated in this section shall survive the termination or expiration of this Agreement with respect to a Claim arising regarding an incident, act or omission occurring during the term of this Agreement.

- 14.19 Legal Fees and Notices. If either party brings an action against the other party to enforce any condition or covenant of this Agreement, the prevailing party shall be entitled to recover its court costs and reasonable attorney's fees incurred in such action, to the extent allowed by law.
- 14.20 Parties to Agreement. This Agreement is entered into by and between the parties hereto and for their benefit. Unless explicitly provided in this Agreement, there is no intent by either party to create or establish third party beneficiary status or rights on any individual and no such third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement. This Agreement shall inure to the benefit of and be binding upon any of the parties hereto and not to their respective legal representatives, successor and assigns, without the prior written consent of the other party.
- 14.21 Counterparts. This Agreement may be executed in multiple counterparts each one of which shall act as an original.
- 14.22 Purchasing. Caterer will comply with all applicable purchasing laws.

Article XV Required Investment

Within thirty (30) days of the Effective Date, the Caterer will pay to the City a non-refundable investment in the amount of Four Hundred Thousand and No/100 Dollars (\$400,000). The use of this investment will be determined solely by the Director, in compliance with the City Charter and the Code of the City of Austin.

CITY OF AUSTIN,
A Home Rule Municipality
P.O. Box 1088
Austin, Texas 78767

By: 

Title: Assistant City Manager

Date: 11/26/97

FINE HOST CORPORATION
3 Greenwich Office Park
Greenwich, Connecticut 06831

By: Randall K. Frazier

Title: Group President

Date: 11-24-97

SCHEDULE OF EXHIBITS

- Exhibit A** **Management Service Agreement between Fine Host Corporation and CBI.**
- Exhibit B** **Request for Proposals**
- Exhibit C** **Caterer' Response to Request for Proposals**
- Exhibit D** **Caterer's M/WBE Plan, dated July 9, 1997**
- Exhibit E** **City Council Authorization of Agreement**
- Exhibit F** **Sample Calculation for Caterer's Compensation**

Only Exhibits "E" and "F"
part of file copy

All processed through
Purchasing

7/30/97

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Council approves negotiation and execution of a ten (10) year revenue contract with the below-listed firm for catering and concession management services at the Austin Convention Center Department in the estimated annual amount of \$1,024,716, with the firm receiving a fixed yearly fee of \$265,000 and an incentive-based yearly bonus not to exceed \$66,250, for a total yearly amount not to exceed \$331,250; and authorizes the City Manager or his designee to enter into the agreement on such terms and conditions as may be reasonable, necessary or required. Finance and Administrative Services for Austin Convention Center Department.

Fine Host Corporation
3 Greenwich Office Park
Greenwich, CT 06831

ADOPTED: _____, 1997 ATTEST: _____

James E. Aldridge
City Clerk

MRS/rjn
0730fine.res

EXHIBIT "E"



DRAFT

Austin City Council MINUTES

WORKSESSION
WEDNESDAY, JULY 30, 1997

CITIZENS COMMUNICATION: GENERAL

READING OF CONSENT AGENDA

READING OF DISCUSSION AGENDA

CITIZENS COMMUNICATION: CONSENT AGENDA

ACTION ON CONSENT AGENDA

PREVIEW OF ITEMS FOR NEXT COUNCIL MEETING

1. Review of Proposed Agenda Items from the City Manager for August 7, 1997.
2. Review of Proposed Agenda Items from Council for August 7, 1997.
3. Discuss and identify consent and discussion agenda items for the July 31, 1997 Council meeting agenda. (Agenda for July 31, 1997 is attached and incorporated by reference.)
4. Set Time Certain, if necessary, for agenda items on the July 31, 1997 Agenda.

Convention Center

- 8/1/97
5. Approve a resolution authorizing negotiation and execution of a ten year revenue contract with AVW AUDIO VISUAL, INC., Austin, Texas, for audio visual services at the Austin Convention Center, in the estimated annual amount of \$94,687. (AVW will receive a fixed annual fee of \$40,000 and an incentive-based yearly bonus not to exceed \$10,000, for a total annual amount not to exceed \$50,000. Estimated net revenue for the Austin Convention Center for 1997-98 is \$94,687. Revenue from this source will be budgeted in future years.) Best proposal of two. No M/WBE Subcontracting opportunities were identified. Approved on, Councilmember Spelman's motion, Councilmember Goodman's second, 5-0 vote, Councilmembers Griffith and Lewis out of the room.

EXHIBIT "E"

6.

Approve a resolution authorizing negotiation and execution of a ten year revenue contract with FINE HOST CORPORATION, Greenwich, Connecticut, for catering and concession management services at the Austin Convention Center Department, in the estimated annual amount of \$1,024,716. (Fine Host will receive a fixed annual fee of \$265,000 and an incentive-based annual bonus not to exceed \$66,250, for a total annual amount not to exceed \$331,250. Estimated net revenue for the Austin Convention Center for 1997-98 is \$1,024,716. Revenue from this source will be budgeted in future years.) Best proposal of five. 22.74% MBE, 28.91% WBE Subcontractor participation.

Approved on, Mayor Pro Tem Garcia's motion, Councilmember Spelman's second, 6-0 vote, Councilmember Lewis out of the room.

Aviation

7.

Approve a resolution declaring official intent to reimburse \$7,000,000 in expenditures made for the construction of the Central Plant Facility as part of the Passenger Terminal Facility Project prior to the issuance of tax-exempt obligations and add \$28,000,000 in variable Rate Revenue Notes to the 1996-97 two-year proposed debt sales to reimburse a portion of the purchase. (Recommended by Airport Advisory Board) [Related to Items 8 & 9]

Approved

8.

Amend Ordinance No. 960910-A, the 1996-97 Amended Capital Budget of the Aviation Department by increasing the appropriations by \$7,000,000 of the Austin-Bergstrom International Airport Capital budget for the construction of the Central Plant Facility as part of the Passenger Terminal Facility Project. (Funding in the amount of \$28,000,000 from the Variable Rate Revenue Note Issue. (Recommended by Airport Advisory Board) [Related to Items 7 & 9]
Ordinance No. 970730-A approved

9.

Approve a resolution to reject all bids for the Central Plant Project at the Austin-Bergstrom International Airport and approve execution of Change Order #6 to the construction contract with MORGANTI INTERNATIONAL, INC., Houston, Texas, for construction of the ABIA Central Plant facility, increasing the contract in the amount of \$7,000,000 for a revised contract not to exceed \$99,046,054.31, plus a remaining contingency fund of \$6,035,733.69, for a total not to exceed amount of \$105,081,788. (Funding in the amount of \$7,000,000 is included in the 1996-97 amended Capital Budget of the Aviation Department.) [Recommended by Airport Advisory Board] DBE Subcontractor participation: 27.73% (22.49% MBE, 6.33% WBE) [Related to Items 7 & 8]

Approved

Items 7 through 9. approved on, Mayor Pro Tem Garcia's motion, Councilmember Spelman's second, 7-0 vote.

EXHIBIT "E"

710 CMO's 7/21/97 8:45A
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: _____
AGENDA DATE: 7/30/97
RCA TYPE: RESOLUTION
Page 1 of 2

SUBJECT: Approve negotiation and execution of a ten (10) year revenue contract with FINE HOST CORPORATION 3 Greenwich Office Park, Greenwich, CT 06831 for catering and concession management services at the Austin Convention Center Department in the estimated annual amount of \$1,024,716. Fine Host will receive a fixed yearly fee of \$265,00 and an incentive-based yearly bonus not to exceed \$66,250 for a total yearly amount not to exceed \$331,250. Reference RFP No. CM97300024.

AMOUNT & SOURCE OF FUNDING: Estimated net revenue for the Austin Convention Center Department for fiscal year 1997-98 is \$1,024,716. Revenue from this source will be budgeted in future years.

REQUESTING DEPT: Finance & Administrative DIRECTOR'S SIGNATURE: Betty Dunkerley
Services for Austin Convention Center Department
FOR MORE INFORMATION CONTACT: Carole Martindale, Supv. Sr. Buyer, 499-2020

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

-----REQUIRED AUTHORIZATION-----
LAW: CHARLES BROTHERS FINANCE: CHARLES CURRY
SMBR: TIM WARREN ACCD: ROBERT HODGE

A request for Proposals (RFP) was issued June 16, 1997 to select a qualified, professional and experienced catering and concessions management firm to perform services at the Austin Convention Center Department. The current contract expires September 30, 1997. A ten (10) year contract will be awarded to take advantage of new IRS rulings now in effect.

The proposals were evaluated based on personnel qualifications, demonstrated applicable experience, financial presentation, compensation plan, and operations and marketing plan. Fine Host Corporation was selected by the evaluation committee using a selection matrix consisting of the above criteria.

Net revenue for fiscal year 1997-98 is estimated to be \$1,024,716, with at least the same amount for each of the remaining nine (9) years. Fluctuation in revenues will be based on fluctuation in gross sales.

Best evaluated proposal/Five (5) proposals received MBE/WBE Solicited: 6/1
MBE/WBE Subcontractor Participation: 22.74%/28.91% MBE/WBE Responded: 0/1

The contractor's choice of work methodology provides for seven (7) areas of subcontracting: specialty foods, vending services, temporary personnel, floral services, equipment maintenance, linens and uniforms, and business services. 22.74% MBE; 28.91% WBE. A detailed listing of subcontractors is available in the Purchasing Office.

The goals for this non-professional service were 14.1% MBE and 15% WBE. Goals were established for the contractor's operating expenses, less full-time payroll and contracted major suppliers. These operating expenses for Fine Host were projected at \$835,433.

EXHIBIT "E"

CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM No.: _____
AGENDA DATE: 7/30/97
RCA TYPE: RESOLUTION
PAGE 2 OF 2

Prime: Fine Host Corporation		
Subcontractor:		
MBE		
Salt Lick (MA)	\$190,000	22.74%
Austin, TX	\$185,000	22.14
Barbecue and smoked meats		
Hurricane Office Supplies (MB)	\$2,000	.24
Cedar Park, TX		
Office Supplies		
Jim Jim's Water Ice (MA)	\$1,000	.12
Austin, TX		
Snowcones		
Travelscope (FB)	\$ 2,000	.24
Austin, TX		
Travel Arrangements		
WBE		
Linda's Food Service (FR)	\$241,500	28.91
Austin, TX	\$ 30,000	3.59
Vending and soda services		
Hospitality Personnel (FR)	\$210,000	25.14
Austin, TX		
Temporary Personnel		
Enchanted Florist (FA)	\$1,500	.18
Austin, TX		
Floral arrangements		

PRICE ANALYSIS

- Adequate competition.
- Eighteen (18) notices were sent, including six (6) MBE's and one (1) WBE. Twenty-eight (28) proposals were issued, including one (1) MBE and one (1) WBE. Five (5) proposals were received, including one (1) WBE. MBE did not respond.
- Pricing compared to the current contract is favorable. Total compensation available to the contractor will be reduced from the current \$400,000 to \$331,250. 80% will be paid as a fixed management fee. 20% will be available as an incentive based on gross sales. The contractor will make a non-refundable investment of \$400,000 in the Convention Center.

APPROVAL JUSTIFICATION

- Best evaluated proposal
- The Austin Convention Center Department concurs with the recommended award.
- Advertised in the Austin American Statesman.

EXHIBIT "E"

EXHIBIT F

SAMPLE CALCULATION OF CATERING AND CONCESSION FEE

Gross Revenue Budget for Accounting Year 1 = \$2,960,160

Periodic Fixed Fee for Accounting Year 1 = \$265,000

Maximum Catering and Concession Fee =

(Periodic Fixed Fee) / .80 =

(\$265,000) / .80 = \$331,250

Maximum Productivity Reward =

(Maximum Catering and Concession Fee) - (Periodic Fixed Fee) =

(\$331,250) - \$265,000 = \$66,250

Base Gross Revenues =

(Gross Revenue Budget) - (Maximum Productivity Reward) x (10) =

(\$2,960,160) - (\$66,250) x (10) = \$2,960,160 - (\$662,500) = \$2,297,660